

No. 8040-1Lab-70/27059. - In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad, in respect of the dispute between the workmen and the management of M/s Dalmia Dadri Cement Ltd., Charkhi Dadri :-

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,  
HARYANA, FARIDABAD

Reference No 26 of 1970

between

THE WORKMEN AND THE MANAGEMENT OF M/S DALMIA DADRI CEMENT LTD.,  
CHARKHI DADRI

Present:—

Sarvshri Bhīm Sain, Madan Lal and Ran Singh, for the Men's Union.

Sarvshri Shankar Lal and Matu Ram Verma, for the Workers Union.

Shri Virendra Kaushik, for the management.

#### AWARD

An industrial dispute arose between the workmen and the management of M/s Dalmia Dadri Cement, Ltd., Charkhi Dadri, with regard to the payment of production bonus and bonus under the Payment of Wages Act for the year 1967. The management simply gave bonus at rate of 4% to their workmen. The workmen demand bonus at the rate of 20% and in addition demanded production bonus also at the rate of 20% of their wages. The demands of the workmen were not accepted and this gave rise to an industrial dispute. Accordingly the Governor of Haryana, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Tribunal for adjudication, — vide Government Gazette Notification No. ID/4137, dated 13th February, 1970.

- "1. Whether the workers are entitled to production bonus for the year 1967? If so, with what details and from which date?
2. Whether the workers are entitled to the bonus at the rate higher than 4 per cent minimum already paid to them for the year 1967? If so, with what details and from which date."

On receipt of the reference usual notices were issued to the parties in response to which a statement of claim was filed on behalf of the workmen and the management filed their written statement. A preliminary objection was raised on behalf of the management that the workmen are not entitled to any production bonus at all because the payment of Bonus Act was a comprehensive and a executive piece of legislation. The following preliminary issued was framed in order to dispose off this objection:

"Whether the claim of the workmen for being given production bonus in addition to the bonus under the payment of Bonus Act is not tenable in law?"

After hearing the learned representative of the parties an interim award was submitted to the Government on 3rd August, 1970 in which it was held that the workmen were not entitled to any annual bonus linked with production or productivity in addition to the bonus under the Payment of Bonus Act. The parties were then directed to produce their evidence with regard to the amount of bonus admissible to them under the payment of Bonus Act. It is, however, not necessary to decide this item of dispute on merits because a compromise has been affected between the parties under which the management has agreed to pay bonus at the rate of 1% of the wages of the workmen in addition to bonus at the rate of 4% already paid to them. A deed of settlement duly signed by the parties has been filed and the statements of their representatives have also been recorded in which the terms of settlement have been admitted. The representative of the workmen have also stated that they have satisfied themselves that they are not entitled to bonus at a rate exceeding 5% in all. The terms of settlement appears to be fair and reasonable and accordingly I hold that the workmen are entitled to bonus at the rate of 1% of their wages in addition to 4% which have already been paid to them and as agreed this would include both profit and production bonus. I give my award accordingly.

No order as to costs.

Dated 4th September, 1970.

P. N. THUKRAL,

Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

No. 1299, dated the 4th September, 1970.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL,

Dated 4th September, 1970.

Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad,

No. 8041-Lab.-70/27061.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad, in respect of the dispute between the workmen and the management of M/s Ashoka Theatre, Rohtak:—

BEFORE SHRI P.N. THUKRAL, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,  
FARIDABAD

Reference No. 50 of 1969

between

SHRI NAND LAL, WORKMAN AND THE MANAGEMENT OF M/S ASHOKA, THEATRE,  
ROHTAK

Present:—

Shri S.N. Vats, for the workman.

Shri T.C. Puri, for the management.

#### AWARD

Shri Nand Lal was in the service of M/s Ashoka Theatre, Rohtak, as a Guide. He has been dismissed from service on account of certain acts of mis-conduct. He is aggrieved by reason of the termination of his service. He has characterised his dismissal as illegal and has served a notice of demands on the management, claiming reinstatement and wages for the period he remained unemployed. This demand was not accepted and it gave rise to an industrial dispute. Accordingly the Governor of Haryana, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Tribunal for adjudication vide Government Gazette Notification No. ID/RK/142-A-69/27894, dated 13th October, 1969.

Whether the termination of service of Shri Nand Lal was justified and in order. If not ; to what relief is he entitle ?

On receipt of the reference usual notices were issued to the parties in response to which a written statement was filed on behalf of the management in which a number of preliminary objections were raised. It is pleaded that the reference is bad in law because the management was neither given an opportunity for being heard nor any regular conciliation proceedings were held as enjoined by law and there was also no report by the Conciliation Officer that he had failed to bring about conciliation and therefore this Tribunal has no jurisdiction to decide the reference. It is further pleaded that the reference is also bad in law because the service of the workman was terminated after due enquiry and the charges against him were admitted by him and in the face of the gross-misconduct committed by the workman, it was not possible to retain him in service and his services were terminated after giving him one month notice, pay which was accepted by him without any protest and he gave receipt for the same in full and final settlement of all his dues. It is submitted that the Tribunal has no jurisdiction to sit in appeal over the punishment given by the management after full consideration of the case. It is also pleaded that a copy of the statement of claim has not been supplied to the management and the workman could not be called upon to file his reply to the written statement filed by the management and calling upon the management to file the written statement without supplying them with a copy of the statement of claim was not legal.

There is no force in any of the preliminary objections raised by the management. The Industrial Dispute (Punjab) Rules, 1968 which lay down the procedure to be followed by the Labour Court or the Tribunal do not make any provisions for calling upon the workman to file his statement of claim. Rule 10(b) of the aforesaid rules simply lays down that where the State Government refers any case for adjudication to the Labour Court or Tribunal, it shall send to the Labour Court or Tribunal concerned and to the opposite party concerned in the industrial dispute, a copy of every such order of reference together with a copy of the statement received by the State Government under sub-rule (3) or sub-rule (4) of Rule 10-A. Sub-Rule (2) of Rule 10(b) further provides that within two weeks of the receipt of the statement referred to in sub-rule (1) the opposite party shall file its rejoinder with the Labour Court or Tribunal, as the case may be, and simultaneously forward a copy thereof to the other party. Thus we see it is the

management which has contravened the rules because a copy of the rejoinder filed by them in this Court was not simultaneously forwarded to the workman. The reason for not requiring the workman to file his statement of claim is obvious because the proceedings are initiated when a workman gives a notice of demand which contains all his grievances and it is then for the management to file their rejoinder. The Procedure followed by this Tribunal directing the management to file their rejoinder is as contemplated by rule 10(b) of the Industrial Disputes (Punjab) Rules, 1958 and it cannot therefore be said to be illegal.

The validity of the reference can not also be challenged on the ground that the Conciliation Officer is not said to have given any opportunity to the management for being heard. Under sub-section (1) of section 10 of the Industrial Disputes Act, the appropriate Government is competent to make a reference if an industrial dispute exists or is apprehended and it is considered expedient to make the reference. It cannot be denied that in the present case an industrial dispute is deemed to exist under section 2A of the Industrial Disputes Act because the management had terminated the service of their workman and he was aggrieved by reason of the termination of his service and he raised a dispute claiming reinstatement. Thus we see that there is no force in any of the preliminary objections raised by the management against the validity of the order of reference or the procedure followed by this Tribunal.

As regards the merits of the case the management have filed a separate written statement in which it is pleaded that the removal from service of the workman Shri Nand Lal was justified because on 10th May, 1969 he along with Shri Jage Ram another employee misbehaved with Sarvshri Rajinder Singh and Hava Singh who had come to see the picture. It is alleged that this matter was thoroughly investigated and both the employees were found guilty and ordered to be removed from service but a leniency was shown and an opportunity was given to them so that their work may improve. It is alleged that the conduct of Shri Nand Lal did not improve because it was found that on 13th June, 1969 he connived with M/s Keshar Dass-Vir Bhan who are carrying on a shop opposite the Ashoka Theater and indulged in black market of Cinema Tickets. A thorough enquiry is also said to have been made in this regard and it was found that the conduct of Shri Nand Lal was very objectionable and serious. It is alleged that in addition to these two incidents there were many other verbal complaints against the behaviour of Shri Nand Lal and therefore the matter was placed in a meeting of the Administrator and his Advisors on 22nd June, 1969 and it was decided to terminate his services after giving him one month pay in lieu of notice because it was found that retaining such a person in service would be injurious to the respondent concern. It is alleged that Shri Nand Lal refused to accept the order. The management also file the original record of the enquiry held by them which according to the workman is said to be illegal because no formal charge sheet was given to him nor was he given any opportunity to cross examine the witness. The workman has also denied the correctness of the allegations made against him. The following issue was accordingly framed.

"Whether the termination of service of Shri Nand Lal was justified and in order? If not, to what relief is he entitled?"

An opportunity has been given to the parties to produce their evidence in support of their respective contentions and I have heard their learned representatives. It may be stated that the very outset that the so called departmental enquiry held against the workman is wholly against the principle or natural justice. The copy of the complaint said to have been given by Sarvshri Hava Singh and Rajinder Singh complaining against the assault and mis-behaviour on the part of the employees of the respondent was not given to the workman concerned nor his explanation obtained. No witnesses were examined in their presence and they had no opportunity to cross examine them. The enquiry with regard to the alleged sale of Cinema tickets in black market with the connivance of Shri Nand Lal workman is also defective. The Enquiry Officer recorded the statements of three witnesses in the presence of workman Shri Nand Lal but did not give him any opportunity to cross examine them. Shri Nand Lal in his statement before the Enquiry Officer simply stated that Shri Kesar Dass, Shopkeeper had given him money for the purchase of three tickets for matinee show of the value of Rs. 2.25 per ticket and he deputed his man who purchased the three tickets and handed them over to Shri Kesar Dass. According to the management this statement amounts to admission of guilt on the part of Shri Nand Lal. I am afraid it is not possible to accept this contention. There is no suggestion that Shri Nand Lal was in league with Shri Kesar Dass and he got the three tickets purchased for him knowing that they would be sold in black market. Shri Kesar Dass in his statement simply admitted that he had got purchased seven tickets of the value of Rs. 2.25 each through Shri Ram Saran Dass Gate keeper out of which he sold one ticket for Rs. 2.45 because he looked after the cycle of the persons who purchased the same and rest of the tickets were sold for Rs. 2.25 each. The learned representative of the management submitted that even resale of cinema tickets is an offence. It may be so but the question for determination is to what extent it can be said that the guilt of Shri Nand Lal for being a party to the resale of cinema tickets in black market is established. Since Shri Nand Lal had no opportunity to cross examine any of the witnesses it can not be said that his dismissal as a result of the departmental enquiry is justified.

The management have also produced evidence on the merits of the case and have examined as many six witnesses. Shri Rajinder Singh who along Shri Hava Singh had made a complaint that he had been insulted and roughly handled by the employees of the respondent was examined as M.W. 1. and he proves the complaint. Shri M. H. Bhagat, Executive Engineer, who also happened to be present in the Cinema Hall at the time when the incident took place, has been examined as M.W. 3. He corroborates the version of Shri Rajinder Singh that he none of them named Shri Nand Lal as one of the assailants in the examination chief but Shri Rajinder Singh in his cross examination stated that he learnt from the staff that one of his assailants was Shri

Nand Lal. The learned representative of the management during the course of argument frankly conceded that in-advertently he committed to get the assailant identified by these two persons but submitted that both of them were respectable and independent witnesses and there is absolutely no reason as to why Shri Rajinder Singh should have falsely named Shri Nand Lal as the person who assaulted him. He also rightly submitted that Shri Rajinder Singh could not be expected to know Shri Nand Lal personally and he had to believe the members of other staff when he was told that the name of his assailant was Nand Lal. It was the duty of the representative of the management to have insisted upon the presence of Shri Nand Lal in the Court at the time when he examined his witness so that they could identify the workman as one of the assailants. In the interest of justice I would have reopened the case and re-called these two witnesses in order to ascertain if they could identify Shri Nand Lal as one of the assailant but this course was not adopted because the management did not choose to dismiss Shri Nand Lal on account of this alleged mis-conduct. He was simply held a guilty but a chance was given to him to improve. He has been dismissed from service because subsequently an allegation was made against him that he was in league with M/s Kesar Dass-Vir Bhan, Shopkeeper and indulged in black market of cinema tickets. No evidence has been led in this Court, to prove this charge. I have already held that the departmental enquiry held against the workman is vitiated because the workman was not given an opportunity to cross-examine any witness. Under these circumstances it must be held that the management had failed to prove that the dismissal of Shri Nand Lal was not justified and in my opinion he is entitled to be reinstated.

The learned representative of the management has submitted that even if the departmental enquiry held against the workman is found to be vitiated and the evidence produced in this Court is also found to be not sufficient to establish the guilt of the workman still he is not entitled to be reinstated because he later on approached the management through Shri Sunder Lal, M. W. 5 and received his wages and notice pay in full and final settlement of his claim. He also specifically gave in writing that he had no claim left against the respondent company. Sarvshri Sunder Lal and Hukam Chand who attested the voucher Ex. M.W. 4/2 by which the workman is supposed to have received his dues in full and final settlement have been examined as M.W. 5 and M.W. 6. Both of them however admitted that at the time Shri Nand Lal signed this voucher, he did not admit that his dismissal was justified or that he was giving up his claim for reinstatement. Shri Nand Lal simply accepted his dues as per the orders of the management. Shri Shanti Parkash Malik, W. W. 2, who is a Municipal Commissioner and also attested the voucher Ex. M.W. 4/2 goes to the extent of saying that the words "in full and final settlement as he has no claim against the company" did not exist on the voucher at the time when the workman received the amount and these words must have been written later on. It is however not necessary to dilate on this matter further because it is established even by the evidence of Sarvshri Sunder Lal and Hukam Chand who have appeared on behalf of the management that Shri Nand Lal did not specifically give up his claim for reinstatement.

at the time he recieved his dues. In my opinion, therefore, a mere receipt of dues does not debar the workman from claiming reinstatement if his original dismissal was not justified and in view of my findings above I am of the opinion he is entitled to be reinstated.

As regards the back wages I am of the opinion that Shri Nand Lal is being reinstated because of the omission on the part of the management in not producing the proper evidence before this Court. I agree with the learned representative of the management that both Shri Rajinder Singh and Shri M.M. Bhagat, Executive Engineer, are respectable and independence and there is absolutely no reasons as to why Shri Rajinder Singh should have falsely named Shri Nand Lal. I am also of the opinion that if Shri Nand Lal was really innocent and as stated by him he was not even present in the Cinema Hall at the time when the alleged incident took place, he should have been personally present in Court at the time when Sarvshri Rajinder Singh and M.M. Bhagat gave their evidence in Court so as to give them an opportunity to identify him as one of the assailants. It appears that Shri Nand Lal very cleverly took advantage of the ignorance of the representative of the management who had failed to make a request for the personal presence of the workman at the time when the evidence of these two witnesses was being recorded. Under these circumstances it cannot be said that Shri Nand Lal was really innocent as alleged by him. He is simply getting the benefit of doubt and, therefore it would not be advisable to burden the management with back wages. I give my award accordingly. No order as to cost.

Dated the 2nd September, 1970.

P. N. THUKRAL,  
Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

No. 1300, dated the 4th September, 1970.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated the 2nd September, 1970.

P. N. THUKRAL,  
Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

B. L. AHUJA,  
Commissioner for Labour and Employment and  
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